

### **REMARKS/ARGUMENTS**

Prior to entry of the present Amendment, claims 17-40 were pending in the application, with claims 1-16 having previously been cancelled without prejudice. In the present Amendment, claims 17, 19, 23, 26 and 40 have been amended. No new matter has been added by this Amendment. After entry of this Amendment, claims 17-40 will be pending.

#### **Examiner's Telephonic Interviews**

On September 2, 2009, Applicants' representative and Examiner Gutman briefly discussed the Examiner's proposed amendment of claim 17 to include the subject matter of allowable claim 19. On September 11, 2009, Applicants' representative and Examiner Gutman also briefly discussed Applicants' proposed amended claim 17, which is incorporated in the present Amendment. Agreement was not reached on the claims.

#### **Advisory Action**

On November 17, 2009, the Examiner issued an Advisory action indicating that the Amendment filed November 11, 2009 in response to the final Office action was not entered because the amendments to claim 17, discussed on September 11, 2009, raise new issues. Accordingly, Applicants have submitted the Amendment with the RCE.

#### **Allowable Subject Matter**

Applicants again gratefully acknowledge the Examiner's indication that claims 19-24 and 27-40 include allowable subject matter. As discussed below, Applicants respectfully submit that, in view of the Amendment filed June 25, 2009, the claims are definite and overcome the rejection under 35 U.S.C. §112, second paragraph.

Allowable dependent claim 19 has been amended into independent form to include all of the limitations of the base claim. Accordingly, newly-independent claim 19 is allowable. Dependent claims 20-22 depend from allowable independent claim 19 and are allowable for at least the same and other independent reasons.

Allowable dependent claim 23 has been amended into independent form to include all of the limitations of the base claim. Accordingly, newly-independent claim 23 is allowable.

Dependent claim 24 depends from allowable independent claim 23 and is allowable for at least the same and other independent reasons.

Allowable dependent claim 26 has been amended into independent form to include all of the limitations of the base claim and the intervening claim. Accordingly, newly-independent claim 26 is allowable. Dependent claims 27-39 depend from allowable independent claim 26 and are allowable for at least the same and other independent reasons.

Allowable dependent claim 40 has been amended into independent form to include all of the limitations of the base claim and the intervening claim. Accordingly, newly-independent claim 40 is allowable.

In view of the foregoing, claims 19-24 and 27-40 should be allowed.

#### **Claim Rejections under 35 U.S.C. §112**

The Examiner rejected claims 17-40 under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner has again stated that the limitation “lateral sides” in line 6 of claim 17 has insufficient antecedent basis. In the previous Amendment filed June 25, 2009, Applicants amended claim 17 (in line 2) to provide proper antecedent basis for the term. In view of the foregoing, Applicants respectfully submit that claims 17-40 are definite and respectfully request reconsideration of the rejections under 35 U.S.C. §112, second paragraph.

#### **Claim Rejections under 35 U.S.C. §102(b)**

The Examiner again rejected claims 17-18 and 25-26 under 35 U.S.C. §102(b) as being anticipated by DE ‘035. Reconsideration of the rejections is respectfully requested.

Independent claim 17 has been amended to define a convertible vehicle comprising a vehicle body having a pair of lateral sides, a folding convertible top, a tensioning bow coupled to a rear side of the folding convertible top and pivotably supported on both lateral sides of the vehicle body by tensioning bow pivots, and a rear trunk lid pivotably supported on both lateral sides of the vehicle body by trunk lid pivots, the trunk lid pivots being separate from the tensioning bow pivots. Claim 17 specifies that a front side of the rear trunk lid is disposed in the vicinity of the tensioning bow when the rear trunk lid is in a closed position and a loading opening of a luggage compartment is disposed underneath the rear trunk lid and underneath the tensioning bow at least when the folding convertible top is closed. Claim 17 also specifies that

the tensioning bow is movable into an upwardly pivoted position during opening of the rear trunk lid or when the rear trunk lid is opened, so that the loading opening is enlarged.

DE '035 does not teach or suggest, among other things, a tensioning bow (piping 19 and/or tensioning rope 18) pivotably supported on both lateral sides of the vehicle body. As previously mentioned, DE '035 discloses a convertible top 2, the rear side of which is directly attached to the rear trunk lid 9 (Fig. 6), so that, upon opening the rear trunk lid 9, at least the rear part portion of the convertible top 2 is correspondingly opened therewith (Figs. 3-4). More specifically, as shown in Figs. 5-6 of DE '035, the trunk lid 9 is formed with a bent portion 17 to accommodate the cloth of the convertible top 2 which is surrounding a tensioning rope 18 by which the cloth may be fixedly tensioned to the trunk lid 9.

DE '035 also does not teach or suggest a tensioning bow coupled to a rear side of the folding convertible top and pivotably supported on both lateral sides of the vehicle body by tensioning bow pivots, and a rear trunk lid pivotably supported on both lateral sides of the vehicle body by trunk lid pivots, the trunk lid pivots being separate from the tensioning bow pivots. Assuming *arguendo* that the piping 19 forms the tensioning bow, as suggested by the Examiner, such a tensioning bow is fixedly connected with the rear trunk lid 9 (also in the case when the tensioning rope 18 forms the tensioning bow). For this reason, two different pivots for pivoting the tensioning and the rear trunk lid, respectively, cannot be found in DE '035.

The Examiner argues that DE '035 discloses a hinge device disposed between the rear trunk lid and the tensioning bow, which is formed by the piping 19, that the hinge device is constructed such that the tensioning bow is pivoted upwardly when the rear trunk lid is opened, and that, when the rear trunk lid is being opened, the rear side of the bow is first raised only slightly and then is raised more considerably as the rear trunk lid is further opened.

However, Applicants respectfully submit that, in DE '035, the spatial relation between the "tensioning bow" (piping 19 and/or the tensioning rope 18) is always constant. Applicants submit that, if it is even possible to identify a hinge device for the convertible top 2, such a hinge device is merely for foldability of the convertible top.

Further, based on the broad interpretation the Examiner of independent claim 17 that an indirect connection of the rear trunk lid and the tensioning bow is shown in DE '035, then, Applicants respectfully submit that the feature that a loading opening is enlarged is not shown in

DE '035 as, when the rear trunk lid is opened, the tensioning bow is not movable upwardly independently from (a further movement) of the rear trunk lid.

Further, the claimed tensioning bow is moveable into an upwardly pivoted position during the opening of the rear trunk lid or when the rear trunk lid is opened and, therefore, is a member provided with its own pivots separately from the pivots of the rear trunk. Again, DE '035 also fails to teach or suggest this subject matter.

For at least these independent reasons, independent claim 17 is allowable. Rejected dependent claims 18 and 25-26 depend from independent claim 17 and are allowable for at least the same independent reasons that claim 17 is allowable.

### **CONCLUSION**

In view of the foregoing, entry of the present Amendment and allowance of claims 17-40 are respectfully requested.

The undersigned is available for telephone consultation during normal business hours at the below-identified telephone number.

Respectfully submitted,

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